

**Technical Careers Institutes, Inc. and District 65,
affiliated with United Automobile, Aerospace
and Agricultural Implement Workers of Amer-
ica. Case 2-CA-17112**

November 16, 1981

DECISION AND ORDER

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

On May 28, 1981, Administrative Law Judge Robert M. Schwarzbart issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Technical Careers Institutes, Inc., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² The Administrative Law Judge failed to address that portion of the complaint which alleges that Respondent's unilateral increase in the length of the workday and the workweek and its unilateral change of working conditions by reducing the daily lunchbreak period were additionally violative of Sec. 8(a)(3) and (1) of the Act. We specifically do not pass on this issue since the General Counsel has not excepted to the Administrative Law Judge's failure to discuss it.

³ Member Jenkins would provide interest on the backpay awards due to Respondent's unlawful increase in the length of the workday and the workweek and its unlawful reduction of the daily lunchbreak period in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain with District 65, affiliated with United Automobile, Aerospace and Agricultural Implement Workers of America, by unilaterally altering terms and conditions of employment of the employees in the bargaining unit, set forth below, for which this Union is the exclusive bargaining representative.

WE WILL NOT threaten to discharge our employees if they work for, or support, the above-named Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL recognize and, upon request, bargain in good faith with the above-named labor organization as the exclusive representative of our employees in the appropriate bargaining unit described below, with respect to hours of work, lunchbreaks, and other terms and conditions of employment, and embody any understanding reached in a written, signed agreement. The appropriate bargaining unit is:

All full-time and regular part-time office clerical employees employed by Technical Careers Institutes, Inc., at 320 West 31st Street, New York, New York, but excluding all other employees, teachers, maintenance and custodial employees, technical employees, managerial employees, confidential employees, head bookkeeper, guards, and supervisors as defined in the Act.

WE WILL rescind the unilateral changes made in February 1980 regarding the length of the workweek, the workday, and the daily lunchbreak, and WE WILL make our employees

whole, with interest, for any losses sustained as a result of such changes.

TECHNICAL CAREERS INSTITUTES,
INC.

DECISION

STATEMENT OF THE CASE

ROBERT M. SCHWARZBART, Administrative Law Judge: This case was heard in New York, New York, on October 22-24 and November 20-21, 1980,¹ upon a complaint issued on May 22, based on a charge filed on March 3 by District 65, affiliated with United Automobile, Aerospace and Agricultural Implement Workers of America, herein called the Union. The complaint alleges that Technical Careers Institutes, Inc., herein called the Respondent, violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, herein called the Act, by unilaterally increasing the number of hours employees are required to work each day and week, and by unilaterally reducing the length of the lunch period, without bargaining on these matters with the Union as the certified bargaining representative of the Respondent's office clerical employees. The Respondent, in answering the complaint, denied committing any unfair labor practices.

All parties were given full opportunity to participate, to produce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Briefs, which have been carefully considered, were filed by the General Counsel and the Respondent.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation located in New York, New York, is engaged in the operation of a private technical school. The Respondent, in the conduct of its operations, annually derives gross revenues in excess of \$1 million, and annually purchases and receives at its facility goods and materials valued in excess of \$50,000 directly from points outside the State of New York.

The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

The electronics technology school presently operated by the Respondent was founded in 1909 as the Marconi Institute, which was engaged in training telegraphers. In

or about 1920, the school was taken over by the Radio Corporation of America, when its name was changed to R.C.A. Institute, Inc. The school then offered training in various engineering disciplines relating to radio and telegraphy. In 1972, the school became accredited to offer degree courses in engineering technology. R.C.A. continued to operate the school until May 1974 when it was purchased in equal shares by a group of 30 faculty members headed by Samuel Steinman, who thereafter operated the Respondent under its present name and entity.²

The Union, at the time of the hearing, had represented the Respondent's teachers and technicians for about 3-1/2 years, and the Respondent's maintenance employees since January or February 1978. In addition, the Union was certified on January 28, 1980, in Case 2-RC-18576 as the bargaining representative for the Respondent's office clerical employees in yet a third unit. The office clerical unit is the only one relevant in this proceeding.³

Employees in the office clerical unit work in the school's administrative department which consists generally of the bursar's office, the registrar's office, the admissions office, the financial aide office, the accounting office, and the academic office. In accordance with the parties' stipulation, I find that the following individuals who at various times headed these offices were or are supervisors and agents of the Respondent within the meaning of Section 2(11) of the Act and that they held or are holding the positions set forth after their names: Bruno M. Suria, financial aid officer,⁴ and Calvin T. Watlington, his successor in that position; Vincent Bruno, administrator of student services and registrar; Richard Carapezzi, consecutively bursar and accountant; Robert Gonzalez and John LiCausi, successively bursars; Salvatore Adelfio and Rodrique de los Reyes, consecutively treasurer-controllers; Walter Arizzni, vice president for marketing; Thomas Smithsi, associate dean of the preparatory department; George Leelike, manager of personnel relations; Richard Bader, dean of administration; Woodrow Hsu, dean of the day school; Martin Tucker, administrator of admissions; Michael Conlin, academics coordinator; and Roy Lewis, associate dean of the preparatory department. In addition, Nathaniel Buch was director of the Respondent's school from 1974 until his departure in November 1979.⁵

² Steinman, who had joined the R.C.A. faculty in 1957, became president and chief executive officer of the Respondent in May 1974. He has continued in this position, except for a 2-year period from May 1977 to May 1979, and was in this office when the events considered herein occurred.

³ Since certification the undisputed appropriate unit for bargaining has been:

All full-time and regular part-time office clerical employees employed by the Respondent at 320 West 31st Street, New York, New York, but excluding all other employees, teachers, maintenance and custodial employees, technical employees, managerial employees, confidential employees, head bookkeeper, guards, and supervisors as defined in the Act.

⁴ The disputed unit placement of Rosa Suria, assistant financial aid, officer, will be discussed below.

⁵ In stipulating that the above-named individuals are or were supervisors while in the indicated positions, the Respondent contended that only Steinman had authority to hire or discharge employees. However, the Respondent did agree that the others could assign work independently, a criterion for supervisory status under Sec. 2(11) of the Act.

¹ All dates hereinafter are in 1980 unless stated to be otherwise.

B. The Facts

The General Counsel and the Union contend that, about 2-1/2 weeks after the Union was certified as the bargaining representative for the Respondent's office clerical employees, the Respondent unilaterally, without notice to or consultation with the Union, increased the number of weekly hours its office clerical employees were required to work from 35 to 39, requiring that employees arrive earlier and leave work later. At the same time, the Respondent shortened the daily lunch period from 1 hour to 37 minutes. The General Counsel argues that this was done both to punish employees for selecting the Union and to improve the Respondent's position at the bargaining table.

The Respondent, in turn, largely relying on timesheets prepared and signed by employees since 1974, contends that the 39-hour workweek had always been in effect, and that such scheduling had been started by R.C.A. and continued by the Respondent to date. Accordingly, as there had been no change in hours, the Union's certification had not prompted an unlawful reaction by the Respondent.

The General Counsel counterargues that, while the Respondent's business records as presented might appear to support the Respondent's position that its office clerical employees had long worked a 39-hour workweek, these records do not accurately describe the work hours and practices in effect before mid-February when, the General Counsel contends, the 39-hour workweek was first invoked. In support of this position, the General Counsel introduced the testimony of a number of employees, the testimony of several individuals formerly employed by the Respondent in supervisory positions, and certain documentary evidence, including other of the Respondent's business records.

Rosa Suria, assistant financial aid officer, testified that when she was first hired by the Respondent in September 1974 as a receptionist in the admissions office, Gregory Chaberski, then administrator of admissions, told her that her hours would be from 8 a.m. to 4 p.m. with lunch from 1 to 2 p.m. However, although those were the hours she worked, Chaberski also directed her to fill out her biweekly timesheet to show that she worked from 7:45 a.m. to 4:10 p.m. with 37 minutes for lunch. He did not provide an explanation for this recordkeeping practice.

After working these hours for 3 years while a receptionist, Chaberski notified her of an opening in the financial aid office and referred her to Salvatore Adelfio, then the Respondent's treasurer and controller. Adelfio described the duties of the vacant position and told her that the hours would be from 9 a.m. to 5 p.m. with an hour for lunch. Following this interview, Suria, in October 1977, advanced to her present position of assistant financial aid officer,⁸ in which she worked the hours thus assigned.

⁸ Rosa Suria's status as a member of the bargaining unit is in issue. The record reveals that as assistant financial aid officer Rosa Suria assists students by filling out forms concerning financial aid, including loan application forms, notifies students that such aid is available, and helps the financial aid officer in preparing reports to the Federal Government. Besides Rosa Suria and the financial aid officer, financial counselor Bhisham

Rosa Suria and almost all other witnesses called by the General Counsel, whether supervisory or not, testified that they complete their biweekly timesheets for each entire pay period just once every 2 weeks on payday.⁷ The timesheets are then submitted to the employees' respective supervisors who also sign them.⁸ Employees are hourly rated.

When Rosa Suria first became assistant financial aid officer, she reported to Bruno M. Suria, financial aid officer from October 1977 until mid-October 1979.⁹ After Bruno Suria resigned, Rosa Suria worked for his successor, Calvin T. Watlington.

The Surias testified that in October 1977 Rosa had informed Bruno that he was completing his own timesheets incorrectly by reporting arrivals at 9 a.m., departures at 5 p.m., with an hour for lunch. Although he actually had been working those hours, Rosa pointed out that everyone she knew had been reporting on their timesheets work hours from 8:45 a.m. to 5:10 p.m. with 37 minutes for lunch. Bruno replied that he wanted to check this. Together they went to the accounting office where they asked Antoinette Ceigle, a bookkeeper, why they were required to list work hours from 8:45 a.m. to 5:10 p.m., with 37-minute lunch periods, on their timesheets when those were not really their work hours. Ceigle replied that it was necessary to record the longer hours for bookkeeping purposes; the hours were logged that way for the school's recordkeeping convenience.¹⁰

In January, shortly before the election, George Leelike, the Respondent's manager of personnel relations,¹¹

Sachdeva is the only other individual employed in the financial aid office. Sachdeva does not report to Rosa Suria and she does not replace the financial aid officer in his absence. She does only her own work even when the financial aid officer is present. Rosa Suria signs only her own timesheets and does not approve the timesheets of other employees, a function performed in that office only by the financial aid officer. In the absence of the financial aid officer, Rosa Suria and Sachdeva report to the controller. Rosa Suria's ballot was challenged at the representation election by the Board agent on the ground that her name did not appear on the voting eligibility list and by the Union observer on the ground that she was a supervisor. As the challenged ballots were insufficient in number to be determinative, her status in the unit was never decided. Since the record contains no evidence that Rosa Suria has any of the supervisory criteria in Sec. 2(11) of the Act, or that she has been clothed with apparent supervisory authority, I find that she is an employee within the meaning of Sec. 2(3) of the Act and is properly included in the office clerical bargaining unit.

⁷ The only exception to this was Edna Agapito, a receptionist in the bursar's office, who testified that she maintained her timesheets on a daily basis as instructed by the then bursar, Robert Gonzalez.

⁸ The parties stipulated that the timesheets completed and signed by Rosa Suria and other office personnel since 1974 generally would show arrival at 8:45 a.m., departure at 5:10 p.m., with 37 minutes for lunch. While there was some deviation from this schedule, the general work pattern as set forth on the timesheets signed by the various employees in unit-type job classifications and countersigned by their supervisors did reflect the 39-hour workweek predicated on the 8:45-5 routine. Overtime premium pay was afforded only for work performed after 39 hours, and work performed after 35 hours, but not exceeding 39 hours, in a given week was paid at straight time.

⁹ In May 1980, after Bruno Suria's departure from the Respondent's school, he and Rosa Suria were married.

¹⁰ Bruno Suria, stipulated to have been a supervisor, also testified that his various superiors had told him that his normal work hours were from 9 to 5 with an hour for lunch. He resigned from the Respondent's employ before the alleged change in hours.

¹¹ Leelike is also one of the shareholders of the Respondent's stock and is a member of its board of directors.

went to Rosa Suria's office and told her that she should not get involved with the Union and should not encourage people to join the Union. Leelike informed Suria that she was not allowed to vote and that she should leave the premises with the supervisors at the time of the election. When Suria replied that she would do what she felt was right, Leelike retorted that someone working at McDonald's who had been told to shave off his beard had been terminated when he had refused to do so. Leelike stated that this was not a threat.¹²

As noted, the Union was successful at the January 18 election and was certified as the bargaining representative of the Respondent's office clerical employees on January 28.

Rosa Suria testified that thereafter, on or about February 21, she and the other financial aid office employees, who at the time, in addition to Sachdeva, also included financial counselor Magdeleine Alvarez, received the following memorandum, dated February 14, from Leelike addressed to all nonfaculty employees:

It has become necessary to issue this memorandum to all non-Faculty employees for the purpose of clearly stating TCI's policy of work hours. The normal work week is comprised of 39 hours. The normal work day begins at 8:45 a.m. and ends at 5:10 p.m. There is a 37 minute lunch, and any breaks are to be authorized by the department supervisor. These hours may be rescheduled only by written approval in advance. These hours apply to all hourly employees and to those who are paid overtime. Any lateness will be docked from your paycheck and any unauthorized absences will not be paid.

When the above February 14 memorandum was distributed, Rosa Suria and the other financial aid personnel were told by Watlington that their hours were being changed. Instead of arriving at 9 a.m. and departing at 5 p.m., they thereafter were to come in at 8:45 a.m. and leave at 5:10 p.m. Watlington declared that they no longer would be allowed to take an hour for lunch, but would be limited to 37 minutes. If they came to work after 8:45 a.m., their pay would be docked.

Rosa Suria then asked Watlington when the provisions of the memorandum were to become effective, and was told that it would be all right to leave work at 5 p.m. that day, but on the following day the employees were expected to come in at 8:45 and to abide by the stated hours thereafter. Suria declared that these changes were being made because of the Union and that the Company most likely would use these conditions at the bargaining table. Watlington agreed that she probably was right.¹³

After the February 14 memorandum was circulated, Rosa Suria noticed the Respondent's president, Samuel Steinman, standing in front of her office at 8:45 a.m., checking on employees as they arrived for work. He also was present to ensure that employees did not leave work before 5:10 p.m. Before the memorandum, she had not

seen Steinman before 9 a.m. Also, following the February 14 memorandum, Suria noted that Watlington, for the first time, had begun to log on his calendar the times that employees left for lunch and returned.

Rosa Suria testified that, although she since has worked the longer schedule as required by the memorandum and Watlington's directive, her compensation remains what it had been before February 14.

Bhisham Sachdeva, a counselor in the financial aid office,¹⁴ testified that in August 1977, when he was first hired by the Respondent as a clerk-typist in that same office, he was told by the then financial aid officer, Mrs. Cudjoe, and the assistant financial aid officer at the time, Doris Jackson, that he would be working from 9 a.m. to 5 p.m. with an hour for lunch. However, when Sachdeva first filled out his timesheet by writing in the hours he had been told to work, Cudjoe told him that he was not supposed to complete the timesheets in this fashion, but, instead, was to put down 8:45 a.m. to 5:10 p.m. with a 37-minute lunch period. She explained that it was school policy to complete the timesheets in this manner. He thereafter filled out the timesheets as instructed, but continued to work the shorter hours originally assigned.

Sachdeva related that he continued to work the same hours after becoming a financial counselor in 1978.

Watlington and Sachdeva had an exchange concerning the latter's punctuality¹⁵ and Sachdeva received the following memorandum, dated February 5, from Watlington on the subject of lateness and absences:

Please be advised that your attendance as well as your lateness continues to increase in a manner which is not beneficial to the Financial Aid Office functioning properly.

I have spoken to you on two-separate occasions about *arriving at work after 9:00 a.m.* and requested that you show some improvement. There must be a definite improvement in your attendance from this point on. [Emphasis supplied.]

On February 7, Sachdeva sent a reply memorandum to Watlington wherein he protested the charges of lateness and questioned the accuracy of the asserted prior reprimands referred to therein. In his response, however,

¹⁴ The parties stipulated that Sachdeva is employed in the relevant office clerical bargaining unit.

¹⁵ Sachdeva's timesheet for the 2-week period ending February 8 contains certain corrections in that his arrival times for January 28, 30, and 31 were changed from 9:10, 9:05, and 9:10, respectively, to 9:30, 9:30, and 9:10. Sachdeva explained that these corrections had been made on February 8, the last day of that pay period, when, as usual, the timesheets for the period were prepared. Sachdeva had been late on those occasions and originally had entered his actual starting times for those dates. However, on February 8, Rodrique de los Reyes, then the Respondent's controller and treasurer, instructed Sachdeva to change these entry times to the corrected hours shown. He told Sachdeva that he would be paid for full days on those dates and should not worry. The timesheet also shows that Sachdeva's arrival times for February 4 and 5, originally inserted as 8:45, were changed to 9:15 and 9:45, respectively. A supervisory entry on the timesheet requested that Sachdeva be paid for 7.8 hours on January 28 to February 5, and noted that Sachdeva had been advised that future lateness would be deducted. The Respondent contends that the foregoing is consistent with its position because both before and after the election its regular workday was 7.8 hours.

¹² Rosa Suria's uncontradicted account of the foregoing conversation with Leelike is credited.

¹³ Watlington did not testify.

Sachdeva did not take issue with the 9 a.m. starting time mentioned by Watlington.

Leelike's above-quoted memorandum of February 14 was given to Sachdeva by Watlington following the Union's certification. Watlington told Sachdeva that he would have to be on the job at 8:45 a.m. If he arrived for work after that time, deductions would be made from his pay. Sachdeva was told to take 37-minute lunches and to leave the job at 5:10 p.m. Sachdeva thereafter abided by the new hours.

Following receipt of Leelike's memorandum, Sachdeva noted that the Respondent's president, Steinman, was at the financial aid office every morning at or before 8:45 asking the whereabouts of given employees. As Sachdeva was situated in the front part of that office, some of these questions had been put to him. According to Sachdeva, such inquiries had not been made before the election.

Although Sachdeva's work hours have increased since the distribution of the February 14 memorandum and Watlington's accompanying explanatory instruction, his weekly earnings have not changed.

Bursar's office employee Ada Bosco¹⁶ gave a similar account. She testified that when she was hired as a clerk-cashier in August 1978, she was told by her then supervisor, Bursar Robert Gonzalez, that her hours would be from 9 a.m. to 5 p.m. with an hour for lunch. Bosco continued to work these same hours in successive positions in that office as receptionist, from October 1978 until November 1979, and as a tuition counselor ever since. However, when at the end of her first 2 weeks with the Respondent she filled out her timesheet to reflect her actual hours, Gonzalez told her to change these entries to show a work schedule from 8:45 to 5:10, with lunch from 2 to 2:37 p.m., for bookkeeping purposes. Bosco thereafter maintained her timesheets as instructed.

Bosco testified that, following the representation election, she found Leelike's February 14 memorandum on her desk. When she asked John LiCausi, who had succeeded Gonzalez as bursar, about the memorandum, LiCausi replied that there was a change of hours. From then on, the employees were to come to work at 8:45 a.m., take 37 minutes for lunch, and get off at 5:10 p.m. If employees were not at work by 8:45, their pay would be docked. Although Bosco's work hours were increased in February, her compensation remained the same.¹⁷

Edna Agapito related that she was hired as a cashier in the bursar's office in October 1978, and that she has held her present position as receptionist-typist in that office since November 1979. When hired, she, like Bosco, had been told by Bursar Gonzalez that her work hours would be from 9 a.m. to 5 p.m. with 1 hour for lunch, but, as also was the case with Bosco, she had been di-

rected by Gonzalez to complete her timesheets to show work hours from 8:45 a.m. to 5:10 p.m. with lunch from 1 to 1:37 p.m. Gonzalez had also told Agapito that this form of entry was for bookkeeping purposes.

Accordingly, while completing her timesheets as instructed, Agapito continued to work the original shorter hours until she received Leelike's memorandum of February 14. Since Agapito was given this memorandum, she has worked from 8:45 to 5:10 and has observed 37-minute lunch periods. There has been no increase in her pay to compensate her for the longer hours worked.

Agapito testified that, although she had been late for work before February, no deductions had been made from her pay. However, after February, her pay was docked for latenesses of 5, 10, and 15 minutes. Her timesheets show a schedule based on a standard workday of 7.8 hours. Accordingly, Agapito's record reveals that on January 8 she arrived for work at 9:45, had lunch between 1 and 1:37 p.m., and left work at 5:10, for a pro-rated total of 6.8 hours.¹⁸ Her work hours as recorded for June 23, when she arrived at 9 a.m., also were proportionately reduced to a credit of 7.55.

Divinia Pagan¹⁹ also testified that, after receiving Leelike's February 14 memorandum, her hours and those of other admissions office employees changed from 9 a.m. to 5 p.m., with an hour for lunch, to 8:45 a.m. to 5:10 p.m., and 37-minute lunch periods. Pagan related that, when she joined the Respondent in 1974, Salvatore Adelfio, the then controller and treasurer, had informed her that her hours would continue to be from 9 to 5 with the 1-hour lunchbreak, and that had been her routine until February 1980, when she had received Leelike's memorandum. At that time, her supervisor, Director of Admissions Martin Tucker, had told her that the hours provided in Leelike's memorandum would become effective immediately. Pagan, too, related that, although the hours became longer, there was no increase in pay, and that Steinman, starting the day after Leelike's memorandum was distributed, began to stand at the door to check employees as they arrived for work. On the first day that he did this, Steinman had asked the whereabouts of two employees.

Pagan identified a series of weekly work schedules concerning admissions office coverage during 3 weeks in mid-1977, several months in 1979, and the first 2-1/2 months of 1980. These schedules list the daily starting times for each employee assigned to the admissions office during the weeks represented.²⁰ The authenticity of these

¹⁸ Although Agapito recalls having been late on January 8, she does not remember when she came to work. This, however, is compromised by her earlier testimony that it was her practice, when late, to put down her actual time of arrival.

¹⁹ Pagan, the mother and mother-in-law of Rosa and Bruno Suria, respectively, began her employment with the school while it was still operated by R.C.A., and remained there in the Respondent's employ after May 1974. Since 1974, she has been an advisor in the admissions office.

²⁰ See G.C. Exhs. 7(a)-(h). Although the admissions office manning schedules for 1980 run through the week of March 10-14, by which time the change in hours alleged herein had become effective, the document for that week relates back as it shows coverage for the 4 preceding weeks and was dated February 12, which was before the issuance of Leelike's, above-quoted February 14 memorandum.

¹⁶ Bosco, also referred to in the record by her married name, Reyes, is in the bargaining unit.

¹⁷ The Respondent argues that Bosco's testimony is contradicted by her time record for June 18, which shows that she arrived for work that day at 11 a.m., took lunch between 2 to 2:37 p.m. and did not leave work until 7:25, after staying late so as to work the full 7.8 hours. Also, while Bosco initially testified that on January 31 and February 7 her entered arrival times of 9:15 a.m. represented latenesses of 30 minutes, she changed this to avow that under the schedule then in effect she had been only 15 minutes late on those days.

schedules, which were prepared by successive administrators of admissions under the authority of the dean of admissions, is not disputed. The schedule, dated June 16, 1977, begins with a preamble, which announces itself as the schedule of starting times for coverage of the admissions office for the next several weeks. The time frames or work shifts there indicated were 9 to 5, 10:30 to 6:30, and 12 to 8. The schedule then set forth next to the names of each admissions office employee daily starting times of 9, 10:30, or 12. With very few exceptions, all starting times shown were for 9. A like reference to the above time frames was made in the coverage schedule dated April 20, 1979, for the 6 weeks between April 30 and June 8 of that year. The assignment patterns there conformed to the earlier schedule, with the very great majority of the assigned starting times set at 9. While the remaining coverage schedules did not also refer to times when the shifts were to end, the starting times assigned for admissions office coverage through 1979 and into 1980 remained the same with a heavy emphasis on 9.

Pagan testified that the work hours shown in the admissions office coverage sheets represented the actual hours worked by employees in that office. Where the number "9" was placed next to the name of an employee, that employee was expected to work from 9 a.m. until 5 p.m., unless the letter "L" was inserted next to the starting time, in which case, the employee was expected to work late, until 8 p.m.²¹ Employees assigned to start work at 10:30 were expected to work until 6:30. One employee, identified as J. Davis, was assigned to work this schedule on certain days so that he might be available to service veterans who attended evening classes.

Pagan, however, also recalled having received the following memorandum, dated July 18, 1974, from Nathaniel Buch, then school director, addressed to the Respondent's supervisors on the subject of office procedures:

As you may know, we at T.C.I. are presently undertaking an intensive advertising campaign in order to greatly improve our enrollment picture for the Fall Term.

In keeping with this undertaking, the following procedures will be reinstated for all office personnel immediately:

- 1) Each member of the staff will be on the premises for 7.8 hours per day. This means that your hours will reflect 8.4 hours each day with 37 minutes for lunch.
- 2) Lunch hours will be staggered so as to keep all areas covered at all times.
- 3) Counsellors will not schedule lunch between 12:00 Noon and 1:00 P.M.
- 4) Supervisors will continuously be aware of work being done by each person in their respective departments.
- 5) Personal Business Absence will be requested and approved by the immediate supervisor of each department prior to the day of the absence.

²¹ Admissions employees were required to work longer work schedules during busy times such as registration periods and at the start of each school semester.

- 6) Absence due to illness must be reported to your immediate supervisor at the start of the day of this absence.

Pagan testified that when the above memorandum was given to her in 1974, on or about the time it was dated, her supervisor, then Admissions Administrator Gregory Chaberski, had asked her to read same, telling her that it was for the purpose of scheduling lunches only; no one should take lunch before 1 p.m. Chaberski spoke individually with each admissions office employee about their lunchtimes to ensure that the office would be fully staffed until 1 p.m. At the time, according to Pagan, all admissions employees generally were working from 9 to 5 with 1 hour for lunch, unless assigned to work an equivalent number of hours on another shift, or unless on required overtime. This did not change after Buch's memorandum and the duration of the lunch period was not affected, except that the lunchbreak subsequently was observed after 1 p.m.

In addition to Bruno Suria, the General Counsel presented the testimony of two other witnesses formerly in supervisory positions with the Respondent, Vincent Bruno²² and Richard Carapezzi.²³

Bruno testified that in February 1980 he attended a meeting of supervisors called by the Respondent's president, Steinman. Also in attendance were Woodrow Hsu, the dean of academics; Ray Lewis, associate dean of the preparatory department; Martin Tucker, administrator of admissions; Richard Bader, dean of administration; Michael Conlin, academics coordinator; and Rodrique de los Reyes, controller and treasurer.

Steinman opened the meeting by announcing that there would be a discussion concerning District 65, the union that had now come into being, and inviting the others to ask questions. Responding to an inquiry concerning the hours that the staff would thereafter work, Steinman declared that, when R.C.A. ran the school, the official school hours for all employees were 8:45 a.m. to 5:10 p.m. with 37 minutes for lunch. Even though those hours had not been enforced, Steinman stated that he would start enforcing them now because of the advent of the Union. He asserted that this was a perfectly legal situation and that the school would be using this as a tool to bargain with the Union at a later date. Steinman directed that all supervisors tell their staffs of this change and that all should abide by these hours, including the supervisors. In response to another query, Steinman declared that these hours would become effective immediately.

²² Bruno worked for the Respondent from October 1974 until his discharge in June 1980. Originally hired as a clerk while a full-time student at the Respondent's school, in April 1976, he became a full-time assistant to the associate dean of the preparatory department, Thomas Smithsi. In November 1976, Bruno became administrator of student services and registrar, which positions he held until leaving the Respondent.

²³ Carapezzi was hired by the Respondent in October 1977 as bursar. In June 1978, Carapezzi became the Respondent's accountant with responsibility for overseeing the work of accounting office personnel, including the bookkeeper, assistant bookkeeper, and accounts receivable clerk. He maintained all books and handled Federal, state, and corporate matters. Carapezzi continued in this position until he resigned from the Respondent in mid-March 1980.

Bruno testified that when the above-described February meeting was conducted, office employees were working from 9 to 5 with an hour for lunch and that he had instructed his own staff as to those hours as necessary. However, immediately following the above meeting with Steinman and the other managerial personnel, Bruno called a meeting of those assigned to work with him and informed them of the new hours. To enforce them, Bruno made certain that he personally was on the job by 8:45. Leelike's memorandum of February 14 was received about 1 week after the meeting with Steinman. Although the actual work hours were changed in February, the method of filling out the timesheets continued as before.²⁴

Bruno related that, when, in April 1976, he became a full-time employee of the school as assistant to Associate Dean Thomas Smithsi, he asked the latter why the timesheets were being filled out so as not to show the hours actually worked. Smithsi had replied that this was just for accounting purposes. When Bruno later became registrar, he asked the same question of School Director Buch and was given the same answer.

The Respondent's former accountant, Carapezzi, testified that, while serving as the Respondent's bursar from October 1977 until June 1978, he instructed the employees assigned to work under his direction that their work hours were from 9 a.m. to 5 p.m. with 1 hour for lunch. Later, but before February, he and his accounting office employees also had worked these same hours.

Carapezzi related that, after receiving Leelike's February 14 memorandum, which he found on his desk on or about that date, he responded with his own written reply, dated February 20, to Leelike, with copies to Controller de los Reyes and to Administrator of Personnel Susan Sieczkowski.²⁵ Carapezzi's note is as follows:

In regard to your memo dated February 14, 1980, I feel it necessary to state the following. At the time of my hire, October 10, 1977, one of the conditions of my hiring was that my hours consisted of a work day beginning at 9:00 a.m. and ending at 5:00 p.m., with a one hour lunch break. I was told at this time that this procedure is *company policy*. The thirty-nine hour work week was only a formality. If a change in this policy has occurred since then, I

²⁴ Steinman questioned Bruno's general reliability by testifying that Bruno had been terminated because he had inappropriately permitted changes in student transcripts that did not correlate with actual grades, and that this resulted in diplomas having been incorrectly issued. In addition, the school had lost much money because the flow of information from student services that enabled the school to certify students who were receiving financial aid was very slow. Contrary to Bruno, who testified that he had not been informed of the reasons for his termination, Steinman testified that Bruno had been confronted with the evidence against him by his supervisor, Dean of Administration Bader, in July, and, soon thereafter, he had been let go. Bruno admittedly did not receive a copy of the internal personnel form subsequently given to Steinman, which set forth the reasons for Bruno's discharge. Bader was not called as a witness. The issue of Vincent Bruno's credibility will be considered below.

²⁵ Sieczkowski's duties as administrator of personnel differs from those of Manager of Personnel Relations Leelike, who works in labor relations, in that Sieczkowski is principally involved with verifying billing and handling of insurance claims for the Respondent's students. She also is responsible for maintaining personnel records.

have failed to be notified. Accordingly, any people I have hired during this time span have been hired under the same conditions. I would greatly appreciate your immediate response of this matter. Thank you.²⁶

Shortly after sending Leelike the above message, Carapezzi met Leelike in the hallway of the Respondent's premises and asked for clarification of the change in policy. Carapezzi told Leelike that, at the time he had been hired, he had been expected to work from 9 to 5 with 1 hour for lunch, and that he wanted to know why he and the persons employed in his office were now being required to work a 39-hour week. Although Leelike replied that he would meet with the employees in Carapezzi's department and discuss the matter, such a meeting never occurred.²⁷

Ellen Harper²⁸ testified that, after receiving complaints from various members of the office clerical and faculty bargaining units about the change in hours affecting the office clerical unit, and following her own investigation, she sent the following letter, dated February 28, to Leelike at the Respondent's school:

In our opinion, the recent increase in working hours for clerical employees represented by District 65, U.A.W. constitutes an unfair labor practice. We have filed charges in this regard with the National Labor Relations Board. A copy of our charge is enclosed.²⁹

We urge you to promptly reinstate the previous hours of work and pay bargaining unit employees for those additional hours already worked. Should this occur, we will of course withdraw our charge.

We are prepared to meet with you to discuss this matter further if you wish.

Harper averred, without contradiction, that the Union had received no communication from the Respondent concerning the office clerical unit either before or after it sent the above February 28 letter to the school, and that no reply to this letter ever was received. Contract negotiations for the office clerical unit began in September. While there since have been discussions concerning working hours, there has been no agreement or resolution of this issue.

Samuel Steinman, the Respondent's president, testified that, in order for the present corporation to continue to operate the school after purchasing it from R.C.A. in

²⁶ Although Carapezzi testified that he personally had delivered the above response to the personnel office and had given a copy to Sieczkowski with a request that she forward it to Leelike, Leelike denied receiving it.

²⁷ Another of the Respondent's business records, a payroll change notice for unit employee Alba Alcazar, also apparently contradicts the Respondent's timesheets. This document indicates that in June 1979 Alcazar was assigned to work from 12:30 to 8:30 p.m., hours corresponding to the General Counsel's position.

²⁸ Harper, an organizer for the Union for about 6 years, services the separate units of the Respondent's employees represented by the Union. Harper was the only union official who was involved in the organizational campaign for the Respondent's office clerical unit and, since certification, has served as the Union's chief negotiator for that unit.

²⁹ Subsequently, the charge in this proceeding was filed on March 3.

May 1974, it was necessary to retain all previous accreditations and degree-granting authority from the State Department of Higher Education and from the National Association of Trade and Technical Schools, and to gain approval from the Veteran's Administration and other agencies. To obtain these approvals, required for continued operation, the new management had to demonstrate that the school would be maintained with no change in administrative policy, curriculum facilities, or working conditions. The Respondent therefore successfully attempted to retain as many of R.C.A.'s former administrators and school employees as would be willing to remain.

Steinman declared that office clerical employees worked the 39-hour week when the Respondent took over operation of the school in 1974 and that in the interest of required continuity, there have been no changes in hours of work for clerical employees since that time. Steinman conceded, however, that, while it was necessary to maintain curriculum and faculty standards, office services, and the caliber of such facilities as libraries and laboratories, the clerical personnel involved in this proceeding do not conduct classes and are not directly associated with the school's academic standing.³⁰

In explaining why the admissions office coverage schedules generally reflected starting times of 9 when, according to the Respondent, the work shift really began at 8:45, Steinman related that the net time during which the admissions office performed services was from 9 to 5. Accordingly, if admissions office employees are at work promptly at 9 a.m., except for peak periods, there would be no net diminution in the time during which services would be rendered in that office as compared with what had been available under R.C.A., as R.C.A. had followed the same policy. While testifying that the switchboard, too, does not open until 9 a.m., Steinman insisted that the hours on the posted admissions office coverage schedules are not the hours that those employees actually were expected to work, as they always had been required to be present by 8:45 and to leave at 5:10.

Steinman denied the account of the February managerial meeting given by Vincent Bruno. According to Steinman, he had called a meeting of ranking school personnel approximately 1 week after the Union's January 28 certification. In addition to those identified by Bruno as having been present, there were Richard Carapezzi;³¹ George Leelike, manager of personnel relations; Walter Arizzni, vice president for marketing; Susan Sieczkowski, personnel administrator; and Richard Bader, then dean of admissions.

According to Steinman, he informed the group that, because the Union had won recognition as bargaining agent for the office clerical unit, the school would have to scrupulously avoid changing any of the terms and conditions of employment as such changes would have to be discussed in advance with the union representative. Responding to questions concerning tardiness and existing conditions of employment, Steinman told those as-

sembled that they should make certain that they continued to do whatever had been done before. There was no discussion of negotiating strategy in future contract discussions with the Union.³²

Steinman also denied that he had checked employee arrivals earlier than before following the issuance of Leelike's February 14 memorandum. Steinman explained that, since November 1979 when School Director Buch departed, Steinman has assumed Buch's duties. As a result, Steinman has arrived at the school much earlier than before to look into matters previously supervised by Buch, coming to work as early as 7:30 and 8 a.m. and remaining late. He has continued this practice since Buch's departure.

Steinman and Leelike trace the inception of Leelike's February 14 memorandum, which Steinman had authorized, to a tardiness problem then being experienced with financial aid employee Bhisham Sachdeva. Sachdeva had become upset when his supervisor, Financial Aid Officer Watlington, had refused to approve his timesheet as submitted because Sachdeva had not entered his lateness for the pay period in question. Sachdeva had explained to Leelike, called in on the matter, that his lateness had been caused by transportation problems. Sachdeva, in turn, was instructed to fill out his timesheet accurately with the proper arrival times. If Sachdeva wanted to record the reason for his lateness, it was up to him.

Leelike then reported the incident to Steinman, who asked him to look into the general matter of lateness in the office and to report back. When Leelike returned to Steinman with his findings on tardiness, the latter accepted Leelike's recommendation that, rather than deal individually with each employee, it would be wiser to remind the employees of the work hours by a general memorandum. Accordingly, Leelike's February 14 memorandum was distributed.

Leelike, too, affirmed that the working hours policy set forth in Buch's above-quoted memorandum of July 18, 1974, had not changed from that time to date. As did the Respondent's other officials, Leelike contended that the timesheets completed to show that 39-hour weeks generally had been worked by the Respondent's office employees since 1974 correctly represented the existing situation.

Although Leelike, as noted, denied receipt of Carapezzi's February 20 memorandum wherein Carapezzi had protested the asserted change in work hours, Leelike did recall going to Carapezzi's office in that period after Carapezzi had asked to speak with him. Carapezzi, during Leelike's visit, announced that he wanted to talk about his working conditions. He had received Leelike's memorandum and, in his mind, this February 14 communication constituted a change. Leelike replied that he knew of no change that had been intended. Carapezzi stated that he wanted Leelike to know that he was very upset about this. When Leelike asked what was making Carapezzi upset, Carapezzi reiterated that this represented a change. The conversation ended when Carapezzi walked out of his own office telling Leelike that he did

³⁰ Accreditation was actually accomplished in 1974 when the Respondent's attorney went to Albany, New York, where he provided the appropriate agencies with information as to how the school would be run.

³¹ While Carapezzi recalled having attended such a meeting, he did not remember what had been said.

³² Steinman's account of the February meeting was substantially corroborated by Arizzni and Leelike.

not think he wanted to talk to him. Carapezzi resigned in mid-March.

The Respondent's position as to the continuity of the 39-hour workweek was further supported by the testimony of Walter Arizzni, vice president for marketing,³³ and two longterm employees, Kathryn Archacki and Lee Goldberg.³⁴

Archacki, secretary to the dean, testified that she has worked 39-hour weeks throughout her approximately 19 years at the school under R.C.A. and the present management.³⁵ When hired by the Respondent in 1974, she was told by the then controller, Adelfio, that her hours would be the same as those she had had with R.C.A. Archacki's hours, from 9 a.m. to 5:25 p.m. with lunch from 2 to 2:37 p.m., have been followed all the time she has been with the school. If Archacki works through her lunch recess, she will leave at 5 instead of 5:25 p.m.

When Archacki received Leelike's February 14 memorandum, which provided that the hours set forth therein could be "rescheduled only by written approval in advance," she asked her supervisor, Dean Hsu, if this memorandum applied to her as well. Hsu promised to check. He later reported that Archacki should continue to work the same schedule as before.

Goldberg, who is Arizzni's secretary, was employed by R.C.A. for about 8-1/2 years before the school was purchased by the Respondent. She averred that from the time she was with R.C.A. to the present she has worked 39-hour weeks, from 9:30 a.m. to 5:55 p.m.,³⁶ taking between 37 to 40 minutes for lunch. While she sometimes works later than 6 p.m., she never leaves before that time. When she was hired by the Respondent in 1974, Adelfio agreed to Goldberg's request that the same arrangement she had had under R.C.A. be continued and that she be allowed to come in later in the morning and stay later in the day to complete her 7.8 hours.

Goldberg received a copy of Leelike's February 14 memorandum that work hours were from 8:45 to 5:10, and, although that communique required that those hours be observed unless there has been advance written authorization, Goldberg has continued to work the same hours as before without discussing the matter with Arizzni and without obtaining written authorization.

C. Discussion and Concluding Findings

The Respondent does not contest the established principle that an employer violates his duty to bargain if, when negotiations are sought or are in progress, he unilaterally institutes changes in the existing hours of work or other terms and conditions of employment.³⁷ Rather, in response to the General Counsel's assertion that the workweek was unilaterally lengthened from 35 to 39 hours approximately 2 weeks after the Union was certified as bargaining representative for the Respondent's

office clerical employees, the Respondent contends that the workweek always had been 39 hours and that no such change had occurred.

This matter is unusual in that the Respondent's timesheets since 1974, which support the Respondent's position, are under attack. The timesheets are also supported by Buch's 1974 memorandum. Conventionally, such business records, consistently maintained in the manner described for so extended a period, might be dispositive. In the present matter, however, the weight of the evidence, in the context of the credibility resolutions to be discussed below, supports the General Counsel's argument that the timesheets are inconsistent with other business records and do not reflect the hours actually worked by the Respondent's office clerical employees before mid-February.

As described above, the General Counsel presented the testimony of five employee witnesses who are in the bargaining unit and three of the Respondent's former supervisors. I credit the testimony of the employee witnesses. That they all were on the Respondent's payroll when, at economic risk to themselves, they testified against their Employer's interest is a factor to be counted in assessing credibility.³⁸ The credibility of these witnesses has also been evaluated in the context of the other factors to be considered herein.

The testimony of former Supervisor Richard Carapezzi is credited as he was a neutral and disinterested witness when he testified. Unlike Vincent Bruno, who also gave evidence as a former supervisor, Carapezzi had not been terminated by the Respondent, but had voluntarily resigned. Although Personnel Manager Leelike did not admit receipt of Carapezzi's memorandum of February 20 protesting Leelike's February 14 communique concerning work hours, Carapezzi's credibility is enhanced by Leelike's testimony that Carapezzi, at the time, did complain about these changes when Leelike came to see him in his office. Leelike noted that Carapezzi, when seeking to discuss the changes, had been quite upset. Having credited Carapezzi, I find that on or about February 20 he prepared and distributed his memorandum in reply to Leelike.³⁹

Carapezzi, on the other hand, detracted from Vincent Bruno's believability as to events at the managerial meeting called by Steinman in early February. There, according to Bruno, Steinman had declared that the work hours would be increased because of the advent of the Union and to provide the Respondent with a bargaining tool. Bruno's account is denied by Steinman and other company witnesses. Although Carapezzi, by his own testimony and other testimony, was among those present at the meeting, he did not recall what had been said. Consider-

³³ Arizzni, like Steinman and Leelike, is one of the 30 coequal shareholders in the Respondent corporation.

³⁴ Both Archacki and Goldberg are members of the office clerical bargaining unit.

³⁵ Archacki has been secretary to the dean during her entire employment.

³⁶ These hours are recorded by Goldberg on her timesheets.

³⁷ *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736 (1962).

³⁸ *World Generator Company, Inc.*, 242 NLRB 1295, 1299, fn. 11 (1979); *Georgia Rug Mill*, 131 NLRB 1304, 1305, fn. 2 (1961), *enfd.* as modified 308 F.2d 89 (5th Cir. 1962). While Agapito appeared to be the most inconsistent of the Respondent's employee witnesses, her testimony concerning her work schedule before and after mid-February is accepted as otherwise corroborated.

³⁹ See *Continental Distilling Sales Company, a Division of Publicker Industries, Inc.*, 145 NLRB 820, 827 (1964), *enfd.* in part 348 F.2d 246 (7th Cir. 1965), where much weight was given to the testimony of a neutral former supervisor.

ing Carapezzi's sensitivity to the subject change in hours, to the point where he protested the matter in writing and/or orally, if Steinman had made the statements attributed to him by Bruno, it is most unlikely that such remarks would have been disregarded by Carapezzi.

In evaluating Vincent Bruno's testimony, I make no finding as to whether he was terminated because of the conduct attributed to him by Steinman. In not accepting Bruno's accounts of the mid-February meeting, it is noted that his version is not supported by Carapezzi; that, having been terminated, Bruno did have grounds for other than a neutral view of the Respondent; and that, as I found, his protestation that he had received no reason for his discharge is unconvincing. Bruno had been advanced from a routine part-time position while a student in the Respondent's school until he became registrar and administrator of student services. In short, he had not been badly treated. The record contains no evidence that Bruno had acted in any way to bring in the Union and there is no developed reason why the Respondent after furthering Bruno's career should have dealt so summarily as not to have notified him of the reasons for his termination.⁴⁰ Accordingly, so much of Bruno's testimony as relates to what Steinman stated at the early February meeting is not credited. However, as Bruno's testimony concerning the actual change in the length of the workday and the shortening of the lunch hour is corroborating by other evidence, that part is accepted.

Bruno Suria, like Carapezzi, had voluntarily resigned from his supervisory position, doing so even before the asserted change in hours became an issue. However, unlike Carapezzi, Bruno Suria, because of close family ties to his wife, Rosa Suria, and mother-in-law, Divinia Pagan, both of whom are still employed and have a material interest in the outcome of this proceeding, cannot be considered neutral. Nonetheless, Bruno Suria's testimony is consistent with the weight of the evidence as developed herein, is independently corroborated, and is accepted.

The testimony of the General Counsel's witnesses is corroborated by certain contemporaneously prepared documents of undisputed authenticity that provide insight as to the hours actually worked before mid-February. Accordingly, Financial Aid Officer Watlington's February 5 note to Sachdeva, reprimanding him for lateness, referred to two separate occasions when Watlington had spoken to him "about arriving at work after 9 a.m."⁴¹ Also, the payroll change notice for employee Alba Alcazar shows that in June 1979 she worked a schedule consistent with what the General Counsel argues was followed before mid-February 1980. More significantly, taken at face value, the coverage sheets for the admissions office indicate that before mid-February most employees in that office were to be in the office from 9 a.m. to 5 p.m. The lesser number of employees

who were assigned to other shifts in that office worked the same number of hours.

Steinman's testimony that, regardless of what the coverage schedules appeared to require, daytime employees nonetheless had been expected to be on the job between 8:45 a.m. and 5:10 p.m. is diluted by his further testimony that the office rendered services only between 9 a.m. to 5 p.m., that the school's switchboard did not open to receive calls until 9 a.m., and that, if these employees arrived for work promptly at 9 and left at 5, the office could operate with no diminution of services as compared to R.C.A. This testimony eliminates any substantive reason for the longer hours, at least as far as the admissions office is concerned.

Similarly, as no one can call the school before 9 a.m., it would appear that the Respondent did not represent itself as open to the public before that hour and that certain other clerical services did not commence before then.

In affording greater credence to the admissions office coverage sheets as business records than to the timesheets, spontaneity of preparation is a compelling factor. While there is considerable testimony that the timesheets were kept in a certain way "for bookkeeping purposes," it is undisputed that the coverage sheets were regularly prepared by the Respondent for its own needs over an extended period and that the time frames for the various shifts as indicated in those schedules had been freely promulgated. Logically, if the Respondent had then intended that the admissions office actually be manned from 8:45 to 5:10 and that employees on other shifts work corresponding hours, it would have been just as easy to have so specified.⁴²

Steinman's explanation of a need to continue services as under R.C.A. in order to acquire or retain accreditation may have provided a rationale as to why the Respondent may have deemed it necessary to have timesheets completed to reflect a 39-hour workweek. However, as a practical matter, this, too, did not translate into substance. Accreditation was obtained after the school's attorney went to Albany and informed the relevant agencies how the school would be operated. However, the clericals are not directly connected to the Respondent's academic standing. While Steinman testified that the longer hours were needed so that there would be no reduction in clerical support services, as noted such services, in fact, would not be diminished if the employees were on the job between 9 a.m. and 5 p.m. With this background, I further credit the testimony of Divinia Pagan that her actual work hours while with R.C.A. conformed to the 35-hour week, and that she had been told by her supervisor that the July 18, 1974, memorandum from School Director Buch was intended only to ensure that employees did not leave the office for their 1-hour lunchbreak before 1 p.m.⁴³

⁴⁰ While Bruno did not receive the internal personnel form given to Steinman setting forth the reasons for the action taken against him, in denying that he had even been given reasons for his termination, Bruno, in my view, overstated his situation.

⁴¹ It is rather unlikely that a formal supervisory reprimand on the subject of lateness would refer to an incorrect starting time.

⁴² While adjustments to certain timesheets based on the 7.8-hour day, as in the cases of Bosco, Sachdeva, and Agapito, tend to enhance authenticity, the weight of the evidence supports the conclusions reached herein.

⁴³ In reaching the conclusions herein, I have discounted the testimony of Archacki, secretary to the dean, and Goldberg, secretary to the vice

Continued

From Union Organizer Harper's undisputed testimony, it is clear that the Respondent refused to notify or consult with the Union about the change in hours. This omission plainly violated Section 8(a)(5) and (1) of the Act even in the absence of a showing that the Respondent had acted in bad faith.⁴⁴ The Respondent was duty-bound to recognize and deal with the newly certified Union as the bargaining agent of the office clerical employees. By taking the unilateral action found herein, the Respondent unlawfully failed to fulfill its duty to bargain.⁴⁵

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time office clerical employees employed by the Respondent at 320 West 31st Street, New York, New York, but excluding all other employees, teachers, maintenance and custodial employees, technical employees, manageri-

president for marketing. While both are technically within the bargaining unit, they are longterm employees who throughout their lengthy tenures have been assigned to work directly for management officials. Their positions have brought them privileges not otherwise accounted for as both work schedules other than the 8:45 to 5:10 routine currently mandated by the Respondent. Archacki assertedly is scheduled to work from 9 to 5:25, and is free to depart at 5 p.m. if she works through her lunch period. Goldberg works from 9:30 to 6, hours she claimed to have followed through her earlier years with R.C.A. and, with the Respondent's permission, to have continued ever since. Contrary to the terms of Leelike's February 14 memorandum, both continued to work their separate schedules without obtaining written authorization. While Archacki did consult with the dean for whom she worked on this matter and obtained verbal clearance, Goldberg continued to work as before with no discussion with her superior, Arizni. The longstanding respective work relationships between Archacki and Goldberg and the high managerial officials with whom they are associated have, to some degree, set them apart from other unit employees and have affected their independence and focus as witnesses.

⁴⁴ *The Baughman Company*, 248 NLRB 1346, 1347 (1980); *Florida Steel Corporation*, 235 NLRB 941, 942-943 (1978).

⁴⁵ It also is concluded that Leelike's undenied January directive to employee Rosa Suria that she should not become involved with the Union, encourage others to support the Union, or vote in the forthcoming representation election, in the context of his reference to someone who had been discharged at McDonald's for not following instructions, was a threat intended to discourage Rosa Suria from working for and supporting the Union. This statement was therefore violative of Sec. 8(a)(1) of the Act. Although not separately alleged in the complaint, this incident was litigated at the hearing and is closely related to matters actually alleged.

al employees, confidential employees, head bookkeeper, guards, and supervisors as defined in the Act.

4. At all times material herein, the Union has been the exclusive bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

5. By unilaterally increasing the length of the workday and the workweek and by unilaterally changing working conditions by reducing the daily lunchbreak period, having implemented these changes on or about February 14, 1980, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct and by threatening an employee to discourage activity and support for the Union, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Respondent be required to rescind the unilateral changes found herein and to make affected employees whole for any losses sustained as a result of the changes.⁴⁶ Reimbursement shall include interest as provided in *Florida Steel Corporation*.⁴⁷ The Respondent also should be ordered to meet and bargain in good faith with the Union concerning work schedule changes and to post the customary remedial notices.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(b) of the Act, I hereby issue the following recommended:

ORDER⁴⁸

The Respondent, Technical Careers Institutes, Inc., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Refusing to bargain with District 65, affiliated with United Automobile, Aerospace and Agricultural Implementation Workers of America, by unilaterally altering terms and conditions of employment of the employees in the bargaining unit set forth below for which the Union is

⁴⁶ *The Baughman Company*, *supra*; *Atlas Tack Corporation*, 226 NLRB 222 (1976).

⁴⁷ 231 NLRB 651 (1977).

⁴⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

the exclusive bargaining representative. The appropriate bargaining unit is:

All full-time and regular part-time office clerical employees employed by the Respondent at 320 West 31st Street, New York, New York, but excluding all other employees, teachers, maintenance and custodial employees, technical employees, managerial employees, confidential employees, head bookkeeper, guards, and supervisors as defined in the Act.

(b) Threatening to discharge employees if they work for or support the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action:

(a) Upon request, meet and bargain in good faith with the Union, as the exclusive collective-bargaining representative of the employees in the appropriate unit described above, concerning the length of the workday, the workweek, lunch breaks, and other terms and conditions of employment, and embody any understanding reached in a signed, written agreement.

(b) Rescind the changes in the length of the normal workday, the length of the normal workweek, and the duration of the daily lunch break made in February

1980,⁴⁹ and make the employees whole for any loss of earnings, privileges, or benefits suffered as a result of such unilateral action in accordance with the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its New York, New York, school copies of the attached notice marked "Appendix."⁵⁰ Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁴⁹ No remedy is deemed appropriate here concerning overtime premium pay as the practice of affording same after 39 hours of work per week was unchanged.

⁵⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."